

INITIAL STATEMENT OF REASONS

FOR ADOPTION OF AMENDMENTS TO THE ENERGY COMMISSION'S POWER PLANT SITING REGULATIONS

Docket No. 02-SIT-1
August 2002

BACKGROUND

The California Energy Commission (Commission) is in the process of updating its regulations that implement its power plant licensing program. The Commission plans to conduct more than one rulemaking to update, clarify, and improve various aspects of the program.

Proposed Changes to the Power Plant Siting Regulations

The proposed amendments address the following topics:

- **Establishing a separate post-certification complaint process**
- **Changing the deadline for start of construction and instituting a deadline for start of operation**
- **Clarifying where the notice of decision must be filed**
- **Clarifying what findings the Commission must make to approve a modification of an existing license**

Establishing a separate post-certification complaint process

Existing regulations, sections 1230 through 1236, establish one process to handle all complaints. The proposed amendment would add a new section to establish a completely separate procedure for handling complaints exclusively for matters related to power plant licensing by the Commission. The proposed addition of section 1237 would specify the required contents of a complaint. This would ensure that a minimum amount of information is provided in order to allow staff to begin an investigation.

The proposed amendments would then give Commission staff 30 days to investigate the complaint and file a report detailing staff's conclusions. This gives staff the opportunity to independently investigate the facts surrounding the assertions

made in the complaint and arrive at an objective determination as to the validity of the complaint and provide the committee with any recommendations.

The proposed amendments would also allow written comments on either the complaint or the staff report to be submitted within 14 days after issuance of the staff report. This would allow any interested person the opportunity to submit their comments to the committee.

The proposed amendments would then give the assigned committee 30 days from issuance of the staff report to dismiss the complaint for insufficiency or lack of merit, issue a written decision on the complaint, or conduct hearings to further investigate the matter and then issue a written decision. This would give the committee the ability to quickly dispose of complaints that have been found to be non-meritorious after full consideration of the staff report and any comments submitted by interested persons.

The proposed amendments would also set forth a process to appeal the committee's decision.

These changes are needed to ensure that non-meritorious complaints do not delay the construction or operation of power plants. Currently all complaints, including those that are non-meritorious, are addressed in a lengthy proceeding without any opportunity to quickly dispose of those complaints that are baseless. The amendments would still ensure that all complaints would be investigated and ruled upon.

Conforming changes would also be made to section 1231 to refer to section 1237 for those complaints alleging noncompliance with a commission decision adopted pursuant to section 25500 of the Warren-Alquist Act.

Section 1232 would be clarified to state that a complaint or request for investigation may be dismissed for lack of merit. This would allow the Commission to expeditiously dismiss non-meritorious complaints or requests for investigation in areas outside of the siting process, in order to ensure that the Commission would not have to spend a significant amount of time handling complaints or requests for investigation that are determined to be unsubstantiated.

Reference in sections 1231 and 1232 to Public Resources Code sections 25451 and 25452 would be deleted because these sections have been repealed.

Changing the deadline for start of construction and instituting a deadline for start of operation

Existing section 1720.3 sets forth a deadline of five years

after the effective date of the decision for the commencement of construction. The proposed amendment to section 1720.3 would require the installation of concrete foundations for major project structures within two years after the effective date of the decision with the possibility of extending this deadline an additional year. The installation of concrete foundations for major project structures would be required to meet what is currently a deadline to commence construction. At that point a large amount of investment in the project, of both time and money, would have been made, making it more likely that a project would proceed to completion. Based on the Energy Commission's experience, two years is a sufficient amount of time to reach this point.

The one-year extension would be predicated on a showing by the project owner that there is good cause to extend the deadline and that the project will continue to conform with all applicable laws, ordinances, regulations and standards (LORS) and will not result in any significant adverse impacts to the environment or congestion in the electric transmission system.

The Commission would determine whether or not good cause is demonstrated. Good cause for a delay in construction may include a change in ownership, administrative or legal appeals that are still pending, or civil or natural disasters that impede construction.

The proposed amendment would authorize the Commission to amend the project's conditions of certification to ensure conformance with LORS or to ensure that all significant adverse impacts are mitigated. This is to ensure that the Commission's findings that a project complies with LORS and has no significant adverse impacts at the time of certification continue to be valid even after substantial time has elapsed since those findings were first made.

The proposed amendment would also add an operation deadline of two years from the installation of concrete foundations for major structures and would authorize the Commission to extend this deadline based on good cause. The operation deadline would help ensure that the project construction proceeds at a sufficient pace. It is important that the Commission have a reasonable indication of when projects will be online and contributing to California's electricity supply to ensure that the Commission can plan for a reliable supply of electricity to meet the state's demands. Without the imposition of a deadline for the start of operation, a project owner could meet the deadline for installation of concrete foundations and then put the construction on hold for any reason, thus circumventing the purpose of the deadline for installation of concrete foundations. Based on the Energy Commission's experience, two years from the installation of concrete foundations is a sufficient amount of time for the completion of construction and the start of project operation.

Currently the regulations allow a project owner to wait 5 years before beginning construction. Several project owners have recently delayed construction indefinitely until the market for power generation improves. The most recent predictions show that California may experience another electricity shortfall as early as the summer of 2004. In order to effectuate the purposes of the Warren-Alquist Act and ensure a reliable supply of electricity, the Commission needs to ensure that when it issues a license for a power plant, that power plant will be built within a reasonable time. By reducing the deadline for constructing power plants, the Commission can ensure that those plants it certifies will be built in the near term to provide much needed electricity to California.

Second, it would make the Commission's permit requirement to begin construction consistent with other permits that apply to power plants. An example of this is the "authority to construct" air quality permit issued by local air districts. Most of these permits allow two years to begin construction, with an opportunity for a one-time extension. If this permit expired, the power plant would not be able to run even if it had a valid Energy Commission permit. The proposed amendments serve to avoid this inconsistency.

Clarifying where the notice of decision must be filed

Existing section 1768 requires the Commission to file a notice of decision on a power plant application for certification with both the Secretary of the Resources Agency and the Governor's Office of Planning and Research.

Public Resources Code section 21080.5(d)(2)(E), which applies to the Energy Commission, only requires a certified regulatory agency to file its notice of decision with the Secretary of Resources. The proposed amendment to section 1768 would clarify that the notice of decision need only be filed with the Secretary of the Resources Agency.

Clarifying what findings the Commission must make to approve a modification to a license

Existing section 1769 allows a modification of a power plant licensed pursuant to Public Resources Code section 25500 et seq. to be approved by the Commission if, among other things, the change is based on new information not available to the parties prior to Commission certification.

The proposed amendment to section 1769 would clarify that in order to approve a modification based on new information, the Commission must find that the new information was not known or

could not have been known with the exercise of reasonable diligence prior to the Commission decision. The term "available" is ambiguous. The amendment serves to clarify the intent of the language.

REPORTS RELIED UPON

The Commission has relied upon no technical, theoretical, or empirical study, report, or similar document in drafting the proposed regulations.

CONSIDERATION OF ALTERNATIVE PROPOSALS

Before adopting the proposed regulations, the Commission must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

To date, the Commission is not aware of any reasonable alternatives to the current amendments, including reasonable alternatives that have otherwise been identified and brought to the attention of the Commission, that would be more effective and/or less burdensome than the proposed regulations in improving the Energy Commission's power plant siting regulations.

TECHNOLOGY AND ALTERNATIVES

The proposed regulations would not impose any specific technology or equipment.

SMALL BUSINESS IMPACTS

The Commission concludes that the proposed regulations would not affect small business. The proposed regulations would mainly be procedural in nature and would impose no requirements upon any business. The Commission is therefore unaware of any alternatives which would present less of an impact upon small business.

ECONOMIC IMPACT ON BUSINESS

The Commission did not identify any significant adverse economic impacts upon business from the proposed amendments to the Commission's siting regulations. The changes to the powerplant siting process are designed to promote clarity and efficiency. In any case, the costs of reasonable compliance with the proposed regulations would be nonexistent or insignificant to Commission siting case applicants.

RELATIONSHIP TO FEDERAL REGULATIONS

There are no comparable federal regulations or statutes governing the Energy Commission's procedural requirements for licensing power plants in California. Thus, there are no duplications or conflicts.